

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 18, 2005

**SENATE BILL**

**No. 481**

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**Introduced by Senator Chesbro**

February 18, 2005

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An act to add Section 4685.7 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 481, as amended, Chesbro. Self-Directed Services Program.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to allocate funds to private nonprofit regional centers for the provision of community services and support for persons with developmental disabilities and their families, and sets forth the duties of the regional centers, including, but not limited to, development of individual program plans and the monitoring of services.

Existing law requires the department to conduct a pilot project under which funds are allocated for local self-determination pilot programs that will enhance the ability of a consumer and his or her family to control the decisions and resources required to meet all or part of the objectives of his or her individual program plan. Existing law requires the department to permit the continuation of the project in 5 regional centers, and expand it to others if certain conditions are met, including, but not limited to, consistency with federal waivers and no impact in the aggregate to the General Fund.

This bill would establish the Self-Directed Services Program, which would expand the self-determination pilot projects to every regional center catchment area, consistent with federal approval of a self-directed waiver, and provided the participants meet certain

eligibility requirements. It would also require the department to develop, revise, and maintain regulations implementing these requirements, and would permit the adoption by the department of emergency regulations to implement these provisions.

*The bill would declare that its provisions would be implemented only to the extent that funds for this purpose are appropriated by the Legislature in the annual Budget Act or other statute.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4685.7 is added to the Welfare and  
2 Institutions Code, to read:

3 4685.7. (a) The self-determination projects described in  
4 Section 4685.5 shall be expanded to every regional center  
5 catchment area, consistent with federal approval of a  
6 self-directed waiver, and the requirements set forth in this  
7 section. In order to provide opportunities to participate in a  
8 self-directed services program, the department shall adopt  
9 regulations to implement the procedures in this section.

10 (b) For purposes of this section, the following definitions shall  
11 apply:

12 (1) "Financial management services" means a service or  
13 function that assists the family or individual to manage and direct  
14 the distribution of funds contained in the individual budget. This  
15 may include the facilitation of the employment of service  
16 workers by the family or individual including federal, state, and  
17 local tax withholding payments, unemployment compensation  
18 fees, wage settlements, fiscal accounting, and expenditure  
19 reports. Specific qualifications shall be established by the  
20 department and required of a financial management services  
21 provider.

22 (2) "Supports brokerage" means a service or function that  
23 assists participating families and individuals make informed  
24 decisions about the individual budget, locating, accessing and  
25 coordinating services consistent with and reflecting his or her  
26 individual needs and preferences. The service is available to  
27 assist in identifying immediate and long-term needs, developing

1 options to meet those needs, and obtaining identified supports  
2 and services.

3 (3) “Supports broker” means a person, selected and directed  
4 by the participant, who facilitates communication between the  
5 participant, the self-directed services program, and other service  
6 providers, and provides necessary assistance to sustain the  
7 participant in the SDS Program. The supports broker fulfills the  
8 supports brokerage service or function and includes consultation  
9 and assistance in the person-centered planning process. Specific  
10 qualifications shall be established by the State Department of  
11 Developmental Services and required of a supports broker  
12 provider.

13 (4) “Waiver” means a waiver of federal law pursuant to  
14 Section 1396n of Title 42 of the United States Code.

15 (5) “Independence Plus Self-Directed (IPSD) Waiver  
16 Program” or “Self-Directed Waiver Program” means a federal  
17 waiver to the state’s Medicaid plan that provides for a delivery of  
18 services program that allows people with developmental  
19 disabilities who need or require long-term supports and services,  
20 and their families, greater opportunity to control his or her own  
21 health by utilization of self-directed services.

22 (6) “Self-determination services,” “self-directed services” or  
23 “SDS” means a delivery system of integrated and inclusive  
24 services that enhance the ability of an individual or his or her  
25 family, as appropriate, to control the decisions and resources  
26 required to meet all or some of the objectives in his or her  
27 individual program plan. Self-directed services shall include, but  
28 are not limited to, home health aide services, habilitation services  
29 for supported employment and prevocational services, respite  
30 services, supports broker functions and services, financial  
31 management services and functions, environmental accessibility  
32 adaptations, skilled nursing, transportation, specialized medical  
33 equipment and supplies, personal emergency response system,  
34 integrative therapies, vehicle adaptations, communication  
35 support, crises intervention, nutritional consultation, behavior  
36 intervention services, specialized therapeutic services, family  
37 assistance and support, housing access supports, community  
38 living supports, advocacy services, individual training and  
39 education, participant-directed goods and services, training and  
40 education transition services. Any references to

1 “self-determination services” shall have the same meaning as  
2 self-directed services.

3 (7) Advocacy services shall mean services and supports that  
4 facilitate the participant in exercising his or her legal, civil and  
5 service rights to gain access to generic services and benefits that  
6 the participant is entitled to receive. Advocacy services shall only  
7 be provided when other sources of similar assistance are not  
8 available to the participant, and when advocacy is directed  
9 towards obtaining generic services.

10 (8) “Individual budget” means the monetary value of services  
11 available to the participant to support the individual’s individual  
12 program plan. The individual budget is constructed using a fair,  
13 equitable, and transparent methodology.

14 (9) “Risk pool” means an aggregate account comprised of a  
15 portion of each participant’s yearly individual budget that is  
16 allocated for use in addressing unanticipated needs.

17 (10) “Employer of record” refers to the individual, or legally  
18 authorized representative, who controls what tasks self-directed  
19 service providers will perform and how the tasks will be  
20 performed. The term “employer of record” refers to the legal  
21 employer of a worker.

22 (11) “Congregate setting” means an environment, including  
23 living arrangements and service delivery settings, in a distinct  
24 geographical area, the makeup of which is defined by the  
25 presence of a majority of individuals with disabilities.

26 (12) “Participant” means an individual, and when appropriate,  
27 his or her family, who are participating in the Self-Directed  
28 Services Program.

29 (c) The Self-Directed Services Program is hereby established,  
30 and shall be available in every regional center catchment area, to  
31 provide participants greater control of needed services and  
32 supports with an individual budget. The methodology for  
33 determining individual budgets shall include, but shall not be  
34 limited to:

35 (1) Limit a participant’s individual budget to 90 percent of his  
36 or her portion of the SDS Program annual appropriation and be  
37 based on historic annual purchase of service costs for consumers  
38 with similar characteristics and circumstances at the regional  
39 center establishing the participant’s individual program plan. For  
40 purposes of this section, “characteristics and circumstances” shall

1 include, but not be limited to, service and support needs, age and  
2 level of ability or disability, living situation, day supports,  
3 availability of family or other natural supports, and whether the  
4 individual is in transition.

5 (2) Provide that 5 percent of the overall annual appropriation  
6 for the SDS Program shall be allocated to a risk pool  
7 participants' unanticipated needs as described in subdivision (n).

8 (3) Provide that 5 percent of the overall annual appropriation  
9 for the SDS Program shall be reflected as savings to the state.

10 (d) The State Department of Developmental Services may  
11 advance funds to a financial management services entity pursuant  
12 to SDS Program regulations to facilitate development of a  
13 participant's individual budget and transition into the SDS  
14 Program.

15 (e) The Self-Directed Services Program shall include, but not  
16 be limited to, the following eligibility requisites:

17 (1) A participant shall be three years of age or older.

18 (2) A participant receiving services in a licensed residential  
19 services facility or other congregate setting shall make  
20 satisfactory arrangements for voluntary discharge from such  
21 living arrangements upon enrollment and prior to participation in  
22 the SDS Program.

23 (3) A participant shall have a developmental disability as  
24 defined in Section 4512.

25 (4) Upon a determination by the individual program plan  
26 planning team that the SDS Program is an appropriate service  
27 delivery model for meeting the individual's needs, a participant  
28 shall accept all of the following terms and conditions:

29 (A) The participant shall undergo an indepth orientation to the  
30 SDS Program prior to enrollment.

31 (B) The participant shall agree to utilize the services and  
32 supports available within the SDS Program only when generic  
33 services are not available, and except for Medi-Cal state plan  
34 benefits when applicable.

35 (C) A participant who is not Medi-Cal eligible may participate  
36 in the SDS Program without IPSD Waiver Program enrollment  
37 and receive self-directed services if all other IPSD Waiver  
38 Program eligibility requirements are met.

39 (D) A participant shall consent to use only services necessary  
40 to implement his or her individual program plan and described in

1 the IPSD Waiver Program, and as defined in paragraph (6) of  
2 subdivision (b), as an available service in the SDS Program, and  
3 shall agree to comply with any and all other terms and conditions  
4 for participation in the SDS Program described in this section.

5 (E) The participant shall accept and manage self-directed  
6 services within the individual budget amount that has been  
7 established by the individual program plan planning team, and  
8 described in the individual's individual program plan.

9 (F) The individual budget amount shall be calculated no more  
10 than once in a 12-month period.

11 (G) The participant shall utilize the services of a financial  
12 management services entity for the purposes of payroll,  
13 disbursement of funds, and related duties pursuant to the  
14 participant's approval. A financial management services provider  
15 may either be hired or designated by the participant. A  
16 designated financial management services provider shall perform  
17 services on a nonpaid basis. An individual or a parent of an  
18 individual in the SDS Program shall provide financial  
19 management services only as a designated provider and only if  
20 the capacity to fulfill the roles and responsibilities as described in  
21 the financial management services provider qualifications can be  
22 demonstrated to the regional center.

23 (H) The participant shall utilize the services of a supports  
24 broker for the purpose of providing services and functions as  
25 described in paragraphs (2) and (3) of subdivision (b). A supports  
26 broker may either be hired or designated by the participant. A  
27 designated supports broker shall perform support brokerage  
28 services on a nonpaid basis. An individual or a parent of an  
29 individual in the SDS Program shall provide supports brokerage  
30 services or his or her designated representative shall provide the  
31 services only as a designated provider and only if the capacity to  
32 fulfill the role and responsibilities as described in the supports  
33 broker provider qualifications can be demonstrated to the  
34 financial management services entity.

35 (5) The participant shall implement his or her individual  
36 program plan. An adult may designate an authorized  
37 representative to effect the implementation. The representative  
38 shall meet all of the following requirements:

39 (A) He or she shall demonstrate knowledge and understanding  
40 of the participant's needs and preferences.

1 (B) He or she shall be willing and able to comply with SDS  
2 Program requirements.

3 (C) He or she shall be at least 18 years of age.

4 (D) He or she shall be approved by the participant to act in the  
5 capacity of a representative.

6 (f) If at any time during participation in the SDS Program a  
7 regional center determines that an individual is no longer eligible  
8 to continue based on the criteria described in subdivision (e), the  
9 regional center shall inform the participant of his or her  
10 ineligibility and shall provide for the participant's transition from  
11 the SDS Program to other services and supports. This shall  
12 include the development of a new individual program plan that  
13 reflects the services and supports necessary to meet the  
14 individual's needs. Upon determination of ineligibility pursuant  
15 to this subdivision, the participant shall be sent written notice of  
16 the fair hearing rights, as required by Section 4701. The regional  
17 center shall ensure that there is no gap in services and supports  
18 during the transition period.

19 (g) An individual determined ineligible as described in  
20 subdivision (f), or who voluntarily exits the SDS Program, shall  
21 be permitted to return to the SDS Program upon meeting all  
22 applicable eligibility criteria and after a minimum of 12 months  
23 time has elapsed.

24 (h) Applicants for, or participants in, the SDS Program shall  
25 have all the rights established in Chapter 7 (commencing with  
26 Section 4700).

27 (i) Only a financial management services provider is required  
28 to apply for vendorization in accordance with Subchapter 2  
29 (commencing with Section 54300) of Chapter 3 of Title 17 of the  
30 California Code of Regulations, for the SDS Program. All other  
31 service providers shall have applicable state licenses,  
32 certifications, or other state required documentation, but are  
33 exempt from the vendorization requirements set forth in Title 17  
34 of the California Code of Regulations. The financial management  
35 services entity shall ensure and document that all service  
36 providers are qualified for any service that may be delivered to  
37 any participant in the SDS Program and that all requirements  
38 described in the IPSD Waiver Program related to service  
39 providers are met.

1 (j) Participants in the SDS Program may request, at no charge  
2 to the participant, criminal history background checks for persons  
3 seeking employment as a service provider and providing direct  
4 care services to the individual.

5 (1) Criminal history records checks pursuant to this  
6 subdivision shall be performed and administered as described in  
7 subdivision (b) and subdivisions (d) to (h), inclusive, of Section  
8 4689.2, and Sections 4689.4 to 4689.6, inclusive, and apply to  
9 vendorization of providers and hiring of employees to provide  
10 services for family home agencies and family homes.

11 (2) The State Department of Developmental Services may  
12 enter into a written agreement with the Department of Justice to  
13 implement this subdivision.

14 (k) Participants enrolled in the SDS Program pursuant to this  
15 section and utilizing an individual budget for services and  
16 supports are exempt from Section 4783 and from the Family Cost  
17 Participation Program.

18 (l) The State Department of Developmental Services may  
19 develop, revise, and maintain regulations implementing the  
20 requirements of this section. The adoption of any emergency  
21 regulations to implement this section that are filed with the  
22 Office of Administrative Law on or before January 1, 2007, shall  
23 be deemed to be an emergency and necessary for the immediate  
24 preservation of the public peace, health and safety, or general  
25 welfare.

26 (m) Notwithstanding any provision of law, an individual  
27 receiving services and supports pursuant to Section 4685.5 may  
28 elect to either participate in the SDS Program or continue to  
29 receive self-directed services within his or her current scope and  
30 existing procedures and parameters. Selection of continued  
31 receipt of self-directed services within current scope and existing  
32 procedures and parameters shall cease effectiveness upon a  
33 participant's voluntary election and qualification to receive  
34 services under another delivery system. Individuals no longer  
35 receiving services pursuant to this subdivision after June 30,  
36 2009, shall be enrolled in another service delivery system.

37 (n) Participants shall be included in the SDS risk pool. The  
38 risk pool shall be allocated by the State Department of  
39 Developmental Services to the regional centers through a process  
40 specified by the State Department of Developmental Services.



1 Funds in the risk pool may be accessed more than once in a  
2 lifetime by a participant and shall be used only in the event of  
3 substantial change in the individual's service and support needs  
4 that were unanticipated at the time the individual budget was set;  
5 or relocation of individual residence; or catastrophic injury or  
6 illness.

7 (o) Each regional center shall be responsible for implementing  
8 an SDS Program.

9 (p) If a federal waiver is not forthcoming for the establishment  
10 of the SDS Program, the SDS Program shall be implemented as a  
11 state only program.

12 *SEC. 2. This act shall be implemented only to the extent that*  
13 *funds for this purpose are appropriated by the Legislature in the*  
14 *annual Budget Act or other statute.*